

Remarks

Applicant has canceled claims 1-11 and 13-24 without prejudice or disclaimer and added new claims 25-36. Accordingly, upon entry of the present amendment, original claim 12, and new claims 25-36 will be pending. Applicant hereby reserves the right to pursue canceled subject matter in subsequently filed continuing applications.

New claims 25-36 have been added in order to claim additional embodiments of the subject matter of the provisionally-elected group. Support for these claims can be found throughout the specification as filed. In particular, support for claims 25-36 can be found in the specification, for example, at page 48, line 20 to page 50, line 25; at Table 1, page 89, row 6; and at page 205, lines 25-27. Support for claims 28 and 29 can be found in the specification, for example, at page 264, line 26 to page 266, line 21; and at page 269, line 28 to 270, line 18. Support for claims 30-35 can be found in the specification, for example, at page 266, line 23 to page 268, line 7. Support for claim 36 can be found in the specification, for example, at page 450, line 23 to page 477, line 16.

In addition, the title has been amended to reflect the provisionally elected sequence. Accordingly, no new matter has been added and entry of the present amendment and remarks are respectfully solicited.

I. The Restriction Requirement

Pursuant to Paper No. 2, mailed October 3, 2003, the Examiner has required an election under 35 U.S.C. § 121 of one of Groups I-X. The Examiner contends that the inventions are distinct and have acquired a separate status in the art as shown by their different classification. Paper No. 2, page 3, section 3, paragraph 5. In addition, the Examiner has further required a sequence election. Paper No. 2, page 3, section 2.

In response, Applicant provisionally elects, *with traverse*, the invention of Group I, represented by new claims 25-36, drawn to polynucleotides, for further prosecution. Moreover, in order to be fully responsive, Applicant also hereby elects sequences corresponding to polynucleotides that encode SEQ ID NO:63 (Y), including but not limited to the HLMIG83 cDNA contained in ATCC Deposit No. PTA-725 (Z) and SEQ ID NO:19 (X) for further prosecution. Applicant reserves the right to file one or more divisional applications directed to non-elected inventions should the restriction requirement be made final. Applicant points out that claims 1-11 and 13-24 have been canceled without prejudice or disclaimer, and that new claims 25-36 are directed to sequences corresponding to clone HLMIG83 and fall within the ambit of Group I as cast by the Examiner.

With respect to the Examiner's division of the invention into ten groups and the reasons stated therefore, Applicant respectfully disagrees and traverses. Even assuming, *arguendo*, that Groups I-X represented distinct and independent inventions, restriction remains improper unless it can be shown that the search and examination of all groups would entail a "serious burden." M.P.E.P. § 803. In the present situation, although the Examiner has stated that the inventions have "separate status in the art as shown by their different classifications" (Paper No. 2, page 3, section 3, paragraph 5), Applicant nonetheless submits that a search of the claims of any of the groups would also provide useful information for the claims of the other groups. For example, in many if not most publications disclosing a protein, the authors also disclose nucleic acids encoding the protein, and antibodies to the protein. Thus, since the searches for proteins, nucleic acids encoding such proteins, and antibodies to such proteins commonly overlap, the combined search and examination of such compositions would not entail a serious burden.

Accordingly, in view of M.P.E.P. § 803, the claims of all of Groups I-X should be searched and examined together in the present application. Applicant therefore respectfully requests that the restriction requirement under 35 U.S.C. § 121 be reconsidered and withdrawn. Applicant retains the right to petition from the restriction requirement under 37 C.F.R. § 1.144.

Conclusion

Entry of the above amendment is respectfully solicited. In view of the foregoing remarks, Applicant believes that this application is now in condition for examination, and an early notice to that effect is urged. The Examiner is invited to call the undersigned at the phone number provided below if any further action by Applicant would expedite the examination of this application.

Finally, if there are any fees due in connection with the filing of this paper, please charge the fees to our Deposit Account No. 08-3425. If a fee is required for an extension of time under 37 C.F.R. § 1.136, such an extension is requested and the appropriate fee should also be charged to our Deposit Account.

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Respectfully submitted,

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